

### **REMARKS**

Claims 1-2, 4-10, 12-16, 17, 18, 20, 23-24 and 29-32 are pending in the application. By this paper, claims 1, 9, 14, 23 and 30 have been amended, claim 21 has been cancelled and new claims 31 and 32 have been added.. Reconsideration and allowance of the application in light of the amendments herein is respectfully requested.

Claims 1-2, 4-10, 12-16, 17, 18, 20-21, 24 and 29-30 stand rejected under 35 U.S.C. § 102(b) as being unpatentable over U.S. patent number 5,796,952 to Davis, et al. ("Davis") in view of U.S. patent number 6,606,657 to Zilberstein, et al. ("Zilberstein"). Claim 23 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kurzke in view of Davis and further in view of Zilberstein. Reconsideration of these rejections is respectfully requested.

#### **Independent Claim 30**

Claim 30 includes limitations nowhere shown in the cited references. For example, claim 30 recites "determining if secure protocol is used...." The office action refers to Davis column 7, lines 1-29 as showing this but the cited passage of Davis merely describes features of the internet and world wide web. There is no suggestion that a secure protocol be determined. Further, claim 30 recites, "if secure protocol is used, adjusting the collection agent to use secure protocol, otherwise using unsecure protocol" The office action cites Davis column 10, line 58 to column 11, line 11 as showing this feature, but this passage is not relevant to the quoted claim language. Still further, claim 30 recites, "using either secure protocol or unsecure protocol as appropriate, transmitting, during usage of said client device, from a monitoring location, said monitoring profile to said collection agent..." The office action does not cite any language from either Davis or Zilberstein as showing, describing or suggesting this limitation. No such language exists, because this limitation and others are simply missing from Davis and Zilberstein.

Finally, Davis fails to disclose the idea of concurrently receiving usage data from the monitored device. For example, claim 30 recites "*during usage* of said client device, receiving

said usage data at said monitoring location” (*emphasis added*). The office action acknowledges that Davis does not disclose this feature, but relies on Zilberstein column 3, lines 1-5 and figure 4 for the necessary showing. However, Zilberstein merely discloses a “stand alone application” (column 2, line 55) which requires that a user register and then monitors pages visited and the amount of time spent per page. This information is later compiled “in real time memory structures” at a central server, column 3, line 1. However, this information is only sent from the user’s computer to the central server “when the user jumps to another web page,” column 2, lines 60-67. Any activity within a web page, such as filling in a web form, mouseovers, etc., is missed and not compiled, at least not “*during usage of said client device*” as recited by claim 30.

Accordingly, claim 30 includes several limitations wholly missing from the cited references. Since a rejection under 35 U.S.C. § 103(a) can only be maintained if all limitations of a claim are shown in the references, the rejection of claim 30 may not be maintained. Withdrawal of the rejection of this claim is therefore respectfully requested. Claim 30 has been amended herein in order to clarify the terminology of this claim, and not for any reason related to patentability.

#### Independent Claim 21

The cited references fail to disclose all limitations of claim 21. First, the Davis and Zilberstein fail to disclose “during user interaction with the application executing on said client device, transmitting said usage data from said client device to said monitoring location” as recited by amended claim 21. As noted, neither Davis nor Zilberstein disclose communicating usage data during actually user interaction with the application, such as entering text or mousing over links and other embedded data. Moreover, the “application executing on said client device” can be any application, including any Windows-based application, and is not limited to web pages in HTML or other types of web browser applications (see page 11, lines 24-28). Thus, while Zilberstein is limited to sending information from the user’s computer to the central server “when the user jumps to another web page,” column 2, lines 60-67, in some applications such as a Word processing program or spreadsheet, there may be no “jump[ing] to another web page.” Thus, the invention in accordance with claim 21 can monitor user interaction with non-web-

based applications. The combination of Davis and Zilberstein do not even recognize this problem, much less provide a solution.

#### Independent Claim 14

The cited references fail to disclose all limitations of claim 14. Claim 14 has been amended to clarify that application programs other than the monitoring profile are specified for monitoring. In the Office Action dated June 23, 2004, it was stated that, "In response to Applicant's argument that Davis fails to disclose or suggest 'a monitoring profile which includes information specifying which application programs, and which features of the application programs are to be monitored,' the Patent Office respectfully submits that this feature is disclosed in the Abstract, figures 307, col. 4, lines 45-53 and col. 5, lines 35-56 of the Davis reference. Specifically, Davis discloses [an] executable program that includes a software timer for monitoring the amount of time the client spends interacting with and displaying the file downloaded from the server as well as monitoring keyboard events, mouse events, etc. In this case, the executable program is interpreted as an application program, and the timer and the events are interpreted as the features of which the program is to be monitored." As amended herein, claim 14 makes clear that application programs operating on the client computer other than the monitoring profile (which is generated for the client computer and transmitted from a server computer) are the applications to be monitored.

#### Independent Claim 9

The cited references fail to disclose all limitations of claim 9. Similar to claim 14, claim 9 has been amended to clarify that application programs other than programs or routines which is a part of the system for monitoring are specified for monitoring. This amendment thus distinguishes Davis, in which a web-based tracking program is embedded in a file which is downloaded to a client device and used to track the user's interaction with the file (Davis, column 4, lines 38-51).

Further, claim 9 recites a server component "for receiving said usage data from each of said client components *during usage of said client computer*" (*emphasis added*). As discussed above, neither Davis nor Zilberstein disclose any method or apparatus for monitoring user

interaction with application programs during usage of the application programs. Rather, Zilberstein only conveys usage data “when the user jumps to another web page.” As noted, this occasional monitoring and reporting can miss user interaction with the application program, if the program is web-based, and will miss all user interaction if the application is not web-based, such as a Word processor program.

#### Independent Claim 1

The cited references fail to disclose all limitations of claim 1. Similar to claims 14 and 9, claim 1 has been amended to clarify that application programs which are not part of the system for monitoring usage, such as programs or routines downloaded to track user interaction, are specified for monitoring. This amendment thus distinguishes the tracking program of Davis. In Davis, a web-based tracking program is embedded in a file. The file is, in turn, downloaded to a client device. The tracking program is then used to track the user’s interaction with the downloaded file, not with other programs. No new matter is added by these amendments to claim 1 (and similar amendments to claims 9 and 14). Support for these amendments is found at page 11, lines 25-28, page 15, lines 7-32,


#### Additional claim amendments

New claims 31 and 32 have been added to further claim subject matter disclosed in this application. No new matter is added by these amendments. Support for claim 31 is found at, for example, FIG. 11 and page 16, lines 6-29 and FIG. 12 and page 22, line 6- page 23, line 24, of the application as filed. Support for claim 32 is found at page 16, line 30 forward, and FIG. 12 and page 22, line 6- page 23, line 24 of the application as filed.

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With this response, the application is believed to be in condition for allowance. Should the examiner deem a telephone conference to be of assistance in advancing the application to allowance, the examiner is invited to call the undersigned attorney at the telephone number below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John G. Rauch", written over a horizontal line.

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